

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TILFORD BLACK,

Plaintiff,

v.

CIV 10-0499 JCH/KBM

CAPTAIN EDDIE HOGAN,
CAPTAIN MATT CANDELARIA,

Defendants.

ORDER GRANTING STAY OF DISCOVERY
&
RESETTING BRIEFING DEADLINES

THIS MATTER is before the Court on Defendants' motion asking the Court to stay discovery pending ruling on their newly-filed dispositive motion. *See Doc. 102.*

The Court ordered that briefing on a *Martinez* Report conclude by December 21, 2012, if Defendants elected to file an optional reply. *See Doc. 90* at 4. Defendants' *Martinez* Report summarily mentions failure to exhaust, qualified immunity, and lack of personal participation as grounds for dismissal of the action and does cite authority for those arguments. *See Doc. 99* at 2-3. However, they did not provide the full "report" portion contemplated by this Court's routine practice and order. *See Doc. 90* at 3 ("No later than Friday, November 2, 2012, Defendants must file a comprehensive *Martinez* Report that addresses all of Plaintiff's remaining claims and any of their affirmative defenses . . . submission of documents alone shall not be considered in compliance with this Order. Defendants are expected to also prepare the 'report' portion of the *Martinez* Report that discusses the claims and the submissions that relate to

them”).

Instead of moving for an extension to file the comprehensive *Martinez* Report, Defendants indicated they would file an additional motion for summary judgment containing the legal basis for their arguments in “short order.” *See id.* at 4. Their more detailed motion raises new arguments beyond those mentioned in the *Martinez* Report, such as standing, absence of a prison policy, and specific arguments why Plaintiff fails to state a claim under various constitutional amendments. *See Doc. 101.*

Meanwhile, Plaintiff prepared discovery requests for admissions and interrogatories and mailed them to the correct address for defense counsel. Some of his questions pertain to prison policies. Though it is not clear when defense counsel became aware of the requests, Plaintiff prepared them some ten days before Defendants filed their *Martinez* Report. *See Docs. 102-1, 102-2* (dated 10/22/12). Plaintiff also responded to Defendants’ *Martinez* Report well ahead of schedule, and a few days before Defendants filed their more detailed motion for summary judgment. *See Doc. 90* at 4 (response due 12/7/12); *Doc. 100* (filed 11/14/12); *Doc. 101* (filed 11/16/12).

Because they filed their motion after Plaintiff filed his response, he has not had the opportunity to fully respond to Defendants’ arguments. In addition, the materials Plaintiff mentions at the outset of his response were not attached to his filing. *See Doc. 100* (filed 11/14/12); *Doc. 90* at 4 (response due 12/7/12). Plaintiff’s discovery requests do not ask for these materials. If he inadvertently omitted these materials from his response, he should supplement the record within the time allotted below. If, as the Court suspects, he is referring to materials that are already of record, supplementation is not necessary.

The timing of Defendants’ motion and the potential omissions from Plaintiff’s response

require supplemental briefing. Furthermore, since the *Martinez* Report approach can avoid the necessity for discovery, the Court will grant the requested stay and ***Plaintiff is hereby notified that he may not propound any other discovery requests.*** This ruling, however, does not prohibit defense counsel from responding to any or all of the outstanding requests in their supplemental filing. In particular, they may want to assess whether their *Martinez* Report adequately addresses the policies about which Plaintiff seeks information.

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants' motion to stay discovery (*Doc. 102*) is GRANTED;
2. Plaintiff shall file his response to the newly-filed motion for summary judgment no later than January 4, 2013;
3. Plaintiff shall supplement his existing response to the *Martinez* Report, if necessary, no later than January 4, 2013;
4. Defendants' must file a reply to Plaintiff's responses, and shall do so no later than January 18, 2013;
5. Plaintiff must file a surreply to Defendants' response, and shall do so no later than February 1, 2013; and
6. Because of the delays occasioned by both parties at the outset of this lawsuit, and because the Court has granted ample additional time for the parties to submit comprehensive filings on the pending dispositive matters, no further extensions will be granted absent extraordinary circumstances.



UNITED STATES CHIEF MAGISTRATE JUDGE